Supreme Court, U.S.
FILED
MAR 3 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1308

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

FRANK GERACE and FRANK MATERIO,

Petitioners,

v.

STATE OF NEW JERSEY, CASINO CONTROL COMMISSION and STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondents.

BRIEF OF THE NEW JERSEY CASINO CONTROL COMMISSION IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT

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Questions Presented

1. Does the First Amendment guarantee the right of officials of a casino industry labor union to conduct union affairs under the influence of organized crime?

2. Is a statute which provides for the disqualification of casino industry labor union officials who associate with a "career offender" in a manner which is reasonably found to be "inimical" to the policies of the Casino Control Act void for vagueness? Specifically, (a) does the failure of the state to publish a list of "career offenders" render the statute void in a case where labor union officials have been found to associate with a notorious organized crime leader and to conduct union affairs under his influence; and (b) is the term "inimical" unconstitutionally vague where it appears in a statute which is primarily aimed at preventing the infiltration of the casino industry by criminal elements, and where it has been interpreted to cover an association by which an organized crime figure influences the conduct of the affairs of a casino industry labor union?

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BRIEF OF THE NEW JERSEY CASINO CONTROL COMMISSION IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT

Counter-Statement of the Case

Section 86 of the New Jersey Casino Control Act (the Act), N.J. Stat. Ann. 5:12-86 (West Supp. 1985), enumerates certain disqualifying criteria which apply to all persons who must be licensed or registered by the Casino Control Commission (the Commission) in connection with the ownership, financing, management and operation of casinos and casino hotels. Section 93 of the Act, N.J. Stat. Ann. 5:12-93 (West Supp. 1985), also applies these criteria to "officers, agents or principal employees" of labor unions which represent or seek to represent persons licensed or registered by the Commission. Hotel and Restaurant Employees and Bartenders International Union Local 54 (Local 54), the union in which petitioners Frank Gerace and Frank Materio were officers, represents approximately 10,000 workers who are licensed or registered by the Commission, and thus its "officers, agents or principal employees" fall within the purview of section 86 and 93.

Of specific relevance here is section 86(f), N.J. Stat. Ann. 5:12-86(f) (West Supp. 1985), which disqualifies persons who are "career offender[s]" or "member[s] of a career offender cartel," and persons who are associated with a career offender or career offender cartel member "in such a manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of this act and to gaming operations." Section 86(f) defines a career offender as "any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this State," and defines a career offender cartel as "any group

of persons who operate together as career offenders." The Commission found that Frank Gerace and Frank Materio were disqualified under section 86(f) because they were associated with certain career offenders, principally one Nicodemo Scarfo, in a manner inimical to the policies of the Act and to gaming operations.

Petitioners' Statement of the Case is in general agreement with the preceding recitation. However, the Commission takes this opportunity to write separately in order to correct certain inaccuracies or omissions found in petitioners' Statement of the Case.

First, petitioners would have this Court believe that the Commission randomly selected Nicodemo Scarfo for classification as a career offender. However, as stated in the Commission's opinion in this matter (Pa122 to Pa133),* Scarfo is a notorious hoodlum and is the head of the Philadelphia-South Jersey organized crime family formerly run by Angelo Bruno. Scarfo's criminal activities range as far back as 1950, and his association with "La Cosa Nostra" was thoroughly documented before the Commission. For that matter, petitioners acknowledged at the hearing before the Commission in 1982 that Scarfo was a career offender (Pet. for Writ of *Cert.* at 41; Pa122 to Pa123).

Second, petitioners fail to give a true picture of the evidence upon which the Commission concluded that their relationship to Scarfo disqualified them under section 86(f) from continuing to control the largest and most powerful

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* "Pa" refers to the petitioners' appendix accompanying their Petition for a Writ of *Certiorari*.

union in the New Jersey casino industry. At the hearing before the Commission, the Division of Gaming Enforcement of the New Jersey Attorney General's office (the Division) presented approximately 15 days of testimony, which the Commission discussed in an 80 page opinion (Pa113 to Pa244). The evidence presented before the Commission was also discussed at length by the New Jersey Superior Court, Appellate Division, *In re Hotel and Restaurant Employees and Bartenders International Union Local 54,* 203 N.J. Super. 297, 496 A. 2d 1111 (App. Div. 1985), certif. denied, —— N.J. ——, —— A. 2d —— (Sup. Ct. 1985), in its opinion upholding the Commission's determination. There would be no point in presenting another lengthy discussion of this evidence here.

For present purposes, the Commission merely notes that the evidence before it established, among other things, Scarfo's interest in Local 54, Scarfo's habit of following and being given advance notice of the union's activities, Scarfo's claim to control the union as part of his criminal organization, Scarfo's easy and frequent access to Gerace and Materio, the demonstrated personal allegiance of Gerace and Materio to Scarfo, the practice of Gerace and Materio of staffing the union's hierarchy with other Scarfo associates, and the practice of the union of doing business with persons and firms tied to Scarfo. The Commission thus found itself confronted with a situation in which Scarfo, a notorious hoodlum, exercises influence over the operations and dealings of the largest labor union in the casino industry. The Commission concluded that the situation before it was inimical to the policies of the Act and to gaming operations, stating:

> . . . once the influence of a career criminal such as Scarfo has been shown, we need not wait for its inevitable detrimental effect on the union and ultimately on the casino industry to become manifest before we can act. The fact of influence by a person such as Scarfo is inimical to the policy of the Act and to gaming operations. [Pa202].

In the view of the Commission, it cannot reasonably be contended that the "inimical" criterion in section 86(f) is not satisfied where a person such as Scarfo exercises influence over key casino industry union officials such as Gerace and Materio.

Gerace and Materio attack the finding of influence by pointing to several passages from the dissenting opinion of Commissioner Jacobson. Petitioners also note that the four-member Commission majority recognized that there was no direct evidence of influence. However, the Commission majority viewed the abundant record of circumstantial evidence before it as amply justifying its conclusion that Scarfo in fact influenced Gerace and Materio in the conduct of the affairs of Local 54.

The Appellate Division, upon its independent review of the evidence, concluded that "the Commission had a record replete with circumstantial evidence of Scarfo's influence over Gerace and Materio." *In re Local 54, supra,* 203 N.J. Super. at 321, 496 A. 2d at 1124. Unless this Court is to fashion a rule which excludes the consideration of circumstantial evidence, there is no basis to reconsider the finding of influence.

Third, petitioners mischaracterize the Appellate Division's holding on the question of whether section 86(f) is unconstitutionally vague. *In re Local 54, supra,* 203 N.J. Super. at 328-334, 496 A. 2d at 1128-1131. Petitioners suggest that the Appellate Division rejected their vagueness challenge by relying on factors which were not reasonably calculated to notify them that Scarfo was a career offender. However, the Appellate Division's discussion of vagueness followed its analyses of the sufficiency of the evidence question and of petitioners' First Amendment challenge. Accordingly, by the time the Appellate Division reached the merits of the vagueness challenge, it had already ruled that sufficient credible evidence existed in the record for the Commission to conclude that Scarfo exercised influence over Gerace and Materio and, in light of such influence, that the disqualification of Gerace and Materio did not infringe upon their First Amendment rights. Since Scarfo's influence had been demonstrated, it was clear to the Appellate Division that "Gerace and Materio cannot seriously contend that they were unaware that Scarfo was a career offender. . . ." *In re Local 54,* 203 N.J. Super. at 334, 496 A. 2d at 1131. Indeed, as previously noted, petitioners acknowledged Scarfo's organized crime membership during the Commission's hearing. Further, although Gerace invoked his Fifth Amendment privilege not to testify, Materio admitted that he had been aware of Scarfo's reputation as a gangster during the time of their association. In addition, petitioners' contribution to Scarfo's bail on a charge of a gangland-style murder, together with widespread publicity about Scarfo's illicit activities, must have placed petitioners on notice of his organized crime membership. Thus, the Appellate Division's conclusion is unavoidable.

Fourth, petitioners neglect to mention that Local 54 sought additional injunctive relief from the United States District Court for the District of New Jersey following the Commission order that Gerace and Materio cease functioning as Local 54 officials. After petitioners intervened in that action, the District Court denied preliminary injunctive relief and abstained from taking further action until completion of the state appellate litigation on the basis of this Court's decision in *Railroad Commission* v. *Pullman Co.*, 312 U.S. 496 (1941). *See Hotel and Restaurant Employees and Bartenders International Union Local 54* v. *Read,* 597 F. Supp. 1431 (D. N.J. 1984), aff'd mem., 772 F. 2d 895 (3 Cir. 1985).

In denying preliminary injunctive relief, the District Court found no reasonable liklihood of success on either the First Amendment or vagueness challenges to the Act. The United States Court of Appeals for the Third Circuit summarily agreed. *Hotel and Restaurant Employees and Bartenders International Union Local 54* v. *Read,* 772 F. 2d 895 (3 Cir. 1985). Thereafter, the petitioners' elected to present all their claims, state and federal, to the state courts, while the union itself sought to continue the federal action. Presently pending before the District Court are cross-motions for summary judgment and the motions of the Commission and the Division to dismiss on the basis of the preclusive effect of the state court decisions.

Last, the Commission and the Division are separate entities with specialized functions and duties within the scheme New Jersey has adopted to regulate its sensitive casino industry. N.J. Stat. Ann. 5:12-63 *et seq.* (West Supp. 1985; N.J. Stat. Ann. 5:12-76 *et seq.* (West Supp. 1985). Each agency operates independently of the other, and any characterization of the Division as the "enforcement arm" of the Commission is inaccurate.

Summary of the Argument in Support of the Reasons for Denying the Writ

This case presents no special or important reasons for this Court to exercise its discretion to grant *certiorari,* because the New Jersey Supreme Court has not decided a federal question which in any way conflicts with the decision of another state court of last resort or of a federal court of appeals, and because the New Jersey state courts have not decided either an unsettled question of federal law or a federal question which in any way conflicts with this Court's decisions. U.S. Sup. Ct. Rule 17.1.

Although this case at one time was worthy of this Court's attention, *Brown* v. *Hotel and Restaurant Employees and Bartenders International Union Local 54,* —— U.S. ——, 104 S. Ct. 3179 (1984), it now turns solely on the factual determination that petitioners operated this critically important casino industry union under the influence of a notorious career criminal. This finding, which was sustained by the New Jersey appellate courts, disposes of the petitioners' First Amendment issue. There is simply no basis in any First Amendment case law to conclude that the Constitution guarantees the right of Gerace and Materio to operate a casino industry union under the influence of organized crime.

Contrary to petitioners' assertion, this case does not require this Court to further expound on its holding in *Roberts* v. *United States Jaycees,* —— U.S. ——, 104 S. Ct. 3244 (1984). The types of associations discussed in *Roberts* cannot, within reason, be stretched to grant First Amendment protection to an association by which an organized crime "boss" exercises influence over the manner in which

two union officials conduct the affairs of a local casino industry union. Moreover, since petitioners have conceded that the State has a compelling interest in preventing the infiltration of organized crime into casino gaming via labor unions (Pet. for Writ of *Cert.* at 37; Pa52), the constitutional balance is tipped in respondents' favor once the Commission's actual finding of influence is reached. The New Jersey appellate tribunals have borne their responsibility to review the record for sufficient credible evidence, and have concluded that influence has been established. Both the New Jersey courts and the federal courts have easily rejected petitioners' First Amendment contentions. Consequently, there is no First Amendment issue which requires this Court's attention.

Finally, there is no need for this Court to review the petitioners' due process challenge based on the alleged vagueness of N.J. Stat. Ann. 5:12-86(f) (West Supp. 1985). Given the finding of influence, petitioners' contention that they did not know that Scarfo was a career offender becomes simply untenable. Moreover, petitioners do not contend that they were unaware of Scarfo's widespread and well-publicized reputation as mob leader at the time they began their association and certainly thereafter. At the very best, they chose to accept the risk that their association would fall within the parameters of the Act. Similarly, any inexactitude in the standards set forth in section 86(f) is overcome by the statute's obvious applicability to labor union officials who conducted union affairs under the influence of organized crime.

Both the vagueness and First Amendment arguments raised by petitioners were analyzed and rejected by the New Jersey Superior Court, Appellate Division and by the

United States District Court for the District of New Jersey. The New Jersey Supreme Court determined that the decision of the Appellate Division did not merit its review, and the United States Court of Appeals upheld the decision of the District Court without opinion. It is thus clear that the issues presented have been rejected in both federal and state court and do not merit further review by this Court.

ARGUMENT

POINT I

Certiorari should be denied where this Court is being asked to rule that the First Amendment guarantees the right of casino industry labor union officials to conduct union affairs under the influence of organized crime.

The central issue presented to the New Jersey courts in this case was whether the record before the Commission supported the finding that Gerace and Materio conducted the affairs of Local 54 under the influence of organized crime. That issue had been analyzed at great length by the Commission, and was scrutinized with equal care by the Appellate Division. The Appellate Division's exhaustive review found ample support in the record for the Commission's finding of influence. The United States District Court likewise concluded that this finding was supported by the relevant evidence. *Hotel and Restaurant Empoyees etc.* v. *Read, supra,* 597 F. Supp. at 1447.

The Commission found that there was a "Scarfo effect" at work in Local 54, and that Gerace and Materio were

the means by which Scarfo worked his will over union affairs (Pa201 to Pa206). This finding has been judicially endorsed, and clearly there is no reason for this Court to once again perform the routine function of examining the thousands of pages of testimonial and documentary evidence to determine if that evidence supports the Commission's finding of influence.

The fact of influence being established, petitioners must necessarily be arguing that the Constitution guarantees their right to conduct the affairs of Local 54 under the influence of organized crime. Obviously, such an argument must be rejected, and in fact it has been rejected in both state and federal court.

It is true, as petitioners note, that this Court's decision in *Roberts, supra,* spoke of the constitutional protection which has been afforded to "certain intimate human relationships." *Roberts, supra,* —— U.S. at ——, 104 S. Ct. at 3249. However, the Court explained that the types of relationships which fall within this category are exemplified by "those that attend the creation and sustenance of a family—marriage . . ., childbirth . . ., the raising and education of children . . . and the cohabitation with one's relatives." *Id.* at 3250. Neither *Roberts* nor any other authority of which the Commission is aware raises to the level of First Amendment protection every relationship which may exist in society. More to the point, there is certainly no authority for placing under the umbrella of First Amendment protection an association by which an organized crime boss affects the operations of a casino industry labor union.

The Appellate Division clearly and correctly held that the Commission did not violate any First Amendment

rights of Gerace and Materio. In addition, the United States District Court, in an opinion upheld by the United States Court of Appeals, held that there was no likelihood of success on the merits of the claim that the Commission had violated the First Amendment rights of Gerace and Materio. *Hotel and Restaurant Employees and Bartenders* v. *Read, supra.*

In this regard, petitioners place great reliance on *Wilson* v. *Taylor*, 733 F. 2d 1539 (11 Cir. 1984). There the Court held it improper to discharge a police officer based solely on his dating the daughter of a "convicted felon reputed to be a key figure in organized crime in central Florida." *Id.* at 1540. However, the Court, on the record before it, concluded that there was no evidence that the police officer had been influenced by the girl's father. *Id.* at 1544-45, n.3. *See, Wilson* v. *Taylor*, 658 F. 2d 1021, 1030 (5 Cir. 1981).

In denying an application to preliminarily enjoin the enforcement of the Commission's order removing Gerace and Materio from union office, the District Court distinguished *Wilson* v. *Taylor, supra,* stating:

> Unlike this case, the ousted officer in *Wilson* faced no significant evidence of acting under the influence of an organized crime leader. The Fifth [*sic*] Circuit specifically suggested that the officer could have been fairly terminated for more extensive involvement with certain felons, indicted individuals, suspects or their relatives. 733 F. 2d at 1545, n.3. [*Read, supra,* 597 F. Supp. at 1447].

Petitioners also rely on a series of cases holding that a person's right to associate with a political group cannot be infringed unless there is specific intent to promote the

group's unlawful goals. *United States* v. *Robel*, 389 U.S. 258 (1967); *Elfbrandt* v. *Russell*, 384 U.S. 11 (1966); *Scales* v. *United States*, 367 U.S. 203 (1961). According to petitioners, "[u]nder the principles of *Scales* and its progeny . . ., the punishment of an individual must be predicated upon *personal* guilt" (Emphasis in original) (Pet. for Writ of *Cert.* at 34).

Petitioners' reliance on these "specific intent" cases is misplaced for several reasons. First, *Scales*, *Elfbrandt* and *Robel* involved criminal statutes. Section 86(f) is civil in nature. Second, as petitioners' recognize Pet. for Writ of *Cert.* at 33), *Scales*, *Elfbrandt* and *Robel* were concerned with the protection of the right of political association. Section 86(f) concerns associations with persons and groups which by definition have as their purpose the pursuit of economic gain in an unlawful manner. The group with which Gerace and Materio are associated has no political purposes, and in fact has no legitimate purposes at all. Third, the statutes involved in *Scales*, *Elfbrandt* and *Robel* penalized associations with certain groups, including innocent associations. Section 86(f) applies only to associations which the Commission reasonably finds to be inimical to the policies of the Act and to gaming operations. Gerace and Materio were not found disqualified on the basis of an innocent association, but because they conduct the affairs of Local 54 under the influence of organized crime. In short, the very quality of the association between Gerace and Materio, on the one hand, and Scarfo and his cohorts, on the other, distinguishes this case from those specific intent cases cited in the petition. In fact, the District Court pointed out these very distinctions in its opinion and concluded that

any reliance on *Robel* and *Elfbrandt* was misplaced. *Read, supra,* 597 F. Supp. at 1447.

In summary, the Commission's action in requiring Geraee and Materio to cease acting as Local 54 officials did not infringe on any rights protected by the First Amendment. In addition, even if an infringement of First Amendment rights is assumed, such an infringement is justified if the State has a compelling state interest "that cannot be achieved through means significantly less restrictive of associational freedoms." *Roberts, supra,* —— U.S. at ——, 104 S. Ct. at 3252. Petitioners concede that New Jersey has a compelling state interest "in keeping organized crime out of unions representing casino employees." (Pet. for Writ of *Cert.* at 37). This Court, *Brown, supra,* —— U.S. at ——, 104 S. Ct. at 3190, as well as the Appellate Division, *In re Local 54,* 203 N.J. Super. at 328, 496 A. 2d at 1127, recognized the compelling nature of New Jersey's interest.

Petitioners appear to contend that, although there is a compelling state interest, the Commission selected means to uphold that interest which unnecessarily restrict constitutionally protected liberty. Specifically, petitioners, by relying on the specific intent cases, apparently are arguing that section 86(f) could have been applied to reach only those situations in which there is proof of both influence on, and illegal or other improper conduct by, the disqualified individuals.

As discussed above, the First Amendment does not impose a specific intent requirement on a statute such as section 86(f). The findings of actual influence by Scarfo over union affairs differentiates this case from one involv-

ing a mere social relationship. In this way, protected associations are not unduly infringed or deterred. Thus, the finding of influence in this non-expressional association case serves a function similar to that of the "shared intent" requirement in the political cases. Furthermore, the Commission in fact interpreted and applied that statute as narrowly as it could, consistent with the purposes of the Act and the fulfillment of the compelling state interest involved.

Obviously, the central purpose of the Act is to exclude unsuitable persons from participating, directly or indirectly, in the casino industry. *See also,* N.J. Stat. Ann. 5:12-64 (West Supp. 1985). This system is not merely intended to remove from the casino industry those persons who commit criminal or other improper acts while participating in that industry, but rather is basically prophylatic in nature. Many sections of the Act, including section 86(f), are designed to exclude from the privilege of participation in this normally illegal industry persons who present a danger to the integrity of the industry. The greatest danger to the integrity of the industry is organized crime infiltration, and it cannot reasonably be contended that the Act is designed to tolerate the presence in the industry of persons shown to be influenced by organized crime. As noted previously, the Commission ruled that "once the influence of a career criminal such as Scarfo has been shown, we need not wait for its inevitable detrimental effect on the Union and ultimately on the casino industry to become manifest before we can act" (Pa202). Viewed in the context of the Act as a whole, section 86(f) cannot be more narrowly applied and the compelling state interest here present cannot be more restrictively protected.

POINT II

Since N.J. Stat. Ann. 5:12-86(f) (West Supp. 1985) is clearly not void for vagueness, this Court need not exercise its discretionary jurisdiction to review this case.

Gerace and Materio contend that section 86(f) is void for vagueness, both "on its face" and "as applied." Specifically, they contend that the term "inimical" is impermissibly vague on its face, and that the statute is vague as applied to them because they were not given notice that Scarfo was a "career offender" until the Commission's hearing in 1982. Both state and federal courts have examined these arguments, and have rejected them.

As the Appellate Division recognized, *In re Local 54*, 203 N.J. Super. at 329, 496 A. 2d at 1128, the degree of specificity which the Constitution demands depends upon the nature of the legislative provision in question. *Village of Hoffman Est.* v. *Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982), reh'g den., 456 U.S. 950 (1982). Economic regulation is accorded greater leeway because its subject matter is often limited. *Ibid.*; *Papachristou* v. *City of Jacksonville*, 405 U.S. 156, 162 (1972); *Boyce Motor Lines, Inc.* v. *United States*, 342 U.S. 337 (1952); *United States* v. *Petrillo*, 332 U.S. 1 (1947); *United States* v. *National Dairy Products Corp.*, 372 U.S. 29, reh'g den., 372 U.S. 961 (1963). Both the Appellate Division and the United States District Court have recognized that "the allegedly vague portions of §86 are aimed primarily at economic activity." *In re Local 54*, 203 N.J. Super. at 329, 496 A. 2d at 1128; *Hotel and Restaurant Employees and Bartenders International Union Local 54* v. *Danzinger* [*sic*],

536 F. Supp. 317, 337 (D. N.J. 1982), reversed, 709 F. 2d 815 (3 Cir. 1983), vacated *sub nom., Brown* v. *Hotel and Restaurant Employees and Bartenders International Union Local 54,* —— U.S. ——, 104 S. Ct. 3179 (1984).

Courts have also demonstrated a greater tolerance when dealing with civil rather than criminal enactments, because the consequences of imprecision are less severe. *Village of Hoffman Est.* v. *Flipside, Hoffman Est., supra* at 499-500; *Barenblatt* v. *United States,* 360 U.S. 109, 137, reh'g den., 361 U.S. 854 (1959), Black, J. dissenting; *Winters* v. *New York,* 333 U.S. 507, 515 (1948). Section 86(f) is a civil enactment, and its consequences are merely to disqualify individuals from participating in the Atlantic City casino industry.

Finally, if legislation inhibits the exercise of constitutionally protected rights, courts are apt to demand a considerably greater degree of exactitude in statutory language. *Village of Hoffman Est.* v. *Flipside, Hoffman Est., supra* at 500; *Papachristou* v. *City of Jacksonville, supra* at 156. In this case, both the Appellate Division and the District Court held that section 86(f) does not impair or inhibit the exercise of constitutionally protected freedoms. *In re Local 54,* 203 N.J. Super. at 329, 496 A. 2d at 1128; *Hotel and Restaurant Emp. etc.* v. *Danzinger* [*sic*], *supra,* 536 F. Supp. at 337-338.

In support of their vagueness challenge, petitioners point to this Court's opinion in *Grayned* v. *City of Rockford,* 408 U.S. 104 (1972), wherein the values which vague laws offend were articulated. As this Court stated

> First . . . we insist that laws give the person of ordinary intelligence a reasonable opportunity to

> know what is prohibited, so that he may act accordingly . . .
>
> Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. [*Id.* at 108].

Petitioners' "as applied" argument addresses the first element since it is based on the contention that Gerace and Materio were unaware that Scarfo was a career offender. However, as the Commission sets forth at the beginning of its Counter-Statement of the Case, section 86(f) explicitly defines the terms "career offender" and "career offender cartel." Although petitioners concede as much (Pa44 to Pa45), they contend that "procedural due process requires that . . . they should have been given notice that Scarfo was, in fact, a career offender prior to the Division's quest for their disqualification" (Pet. for Writ of *Cert.* at 45).

The clear intent of section 86(f) was to prevent contact between the highly sensitive casino industry and those who use crime for their own economic gain. The evidence adduced at the hearing before the Commission clearly demonstrated Scarfo's underworld notoriety, which petitioners also concede (Pet. for Writ of *Cert.* at 41), thereby placing Scarfo at the center of the maelstorm which the New Jersey Legislature, through section 86(f), sought to prevent from wreaking havoc on the burgeoning casino industry. However, petitioners insist that they "were not reasonably apprised as a matter of common intelligence that Scarfo was to be considered a career offender for the purposes of the Act" (Pet. for Writ of *Cert.* at 45).

The petitioners' claimed "lack of fair warning" (Pet. for Writ of *Cert.* at 41) does not prevent their disqualification under section 86(f) because their "as applied" vagueness challenge must be considered in light of the facts of this case. *United States* v. *Mazurie*, 419 U.S. 544, 551 (1975). Under such circumstances, the Appellate Division had no difficulty in concluding that the fact of Scarfo's influence over petitioners, particularly in light of their willingness to contribute major personal assets towards a bail fund for the release of Scarfo while under indictment for a highly publicized gangland-style murder, was more than adequate to reasonably apprise them that their close contact with Scarfo was the "kind of conduct which is likely to result in disqualification." *In re Local 54*, 203 N.J. Super. at 333, 496 A. 2d at 1130-1131. In light of the Appellate Division's affirmance of the Commission's findings about the relationship of Gerace and Materio to the notorious Scarfo, their "as applied" argument is absurd.

In addition, the contention that the Commission should have utilized the "exclusion list" authorized by N.J. Stat. Ann. 5:12-71 (West Supp. 1985) to give notice that Scarfo was a career offender is equally meritless. The exclusion list is not a list of all career offenders. Indeed, there are many persons on the list who are not career offenders at all, but who have been convicted of cheating at casino games. The list is maintained for the use of casino operators and law enforcement officials, in order to exclude certain undesirable persons from casino hotels, and was certainly not intended to notify the public of the identity of all career offenders.

Petitioners "facial" vagueness argument is that the term "inimical" in section 86(f) is unconstitutionally vague. Viewed within the context of the Casino Control Act, it is clear that section 86(f) is directed at associations which directly or indirectly undermine the integrity of the casino industry, *i.e.*, associations formed for illegal purposes or associations which permit corrupt influences to seep into the industry. In addition, it is clear beyond question that conducting the affairs of the largest and most significant casino industry labor union under the influence of organized crime is "inimical" within the meaning of section 86(f). Even if the outermost boundries of section 86(f) may not be delineated with exactitude, any such uncertainty is irrelevant here since the conduct of Gerace and Materio falls squarely within the statute's proscription. *Village of Hoffman Est.* v. *Flipside, Hoffman Est., supra.* at 495.

The Appellate Division and the United States District Court have upheld section 86(f) as against the vagueness arguments advanced by Gerace and Materio. The New Jersey Supreme Court and the Court of Appeals summarily rejected the requests to review the decisions of the respective lower courts. There is no reason for this Court to review these issues again.

CONCLUSION

Petitioners are asking this Court to rule (1) that they have a First Amendment right to operate a casino industry labor union under the influence of organized crime, (2) that they were deprived of due process because they were not informed by New Jersey that a notorious hoodlum who utilized them to work his will over union affairs was a "career offender," and (3) that they were denied due process because they could not be expected to know that infiltration of a casino industry labor union by organized crime would be considered "inimical" to the policies of the Casino Control Act. The mere statement of petitioners' arguments reveals their complete lack of merit, and the Commission respectfully submits that those arguments provide no basis for this Court to exercise its discretionary jurisdiction by granting the petition.

Respectfully submitted,

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Dated: February 28, 1986